

Panaji, 26th November, 1990 (Agrahayana 5, 1912)

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OFFICIAL GAZETTE



GOVERNMENT OF GOA

EXTRAORDINARY

No. 2

GOVERNMENT OF GOA

Department of Labour

Notification

No. 7/44/89-IWT (Part)

The following arbitration Award made by Shri S. V. Nevagi, Arbitrator appointed under Section 10-A of the Industrial Disputes Act, 1947 is hereby published as required under the provisions of section 17 of the said Act.

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary. (Labour).

Panaji, 20th November, 1990.

BEFORE SHRI S. V. NEVAGI,
HON'BLE ARBITRATOR
AT PANAJI

GOVERNMENT OF GOA

No. CLE/RND/Arb./90

Government of India Navigation Employees'
Union (Goa)

V/s

The Captain of Ports, Govt. of Goa

Party I represented by Shri Subhas Naik.

Party II represented by Sr. Govt. Counsel Adv. H. R. Bharne.

Panaji. Dated: 6-11-1990

AWARD

This is an award being passed by an Arbitrator, who has been appointed under Sec. 10(A) of the Industrial Disputes Act, 1947. The award pertains to an industrial dispute between Party I/Union and the Employer of the employees who are the Govt. employees. The Party No. II/River Navigation Department is a Government department and a section of its employees is held as industrial workers within the meaning of the term under the Act and they are entitled to all benefits available to an industrial worker under I.D.A. as well as analogous labour law. The witness Shri Christopher Fonseca is the Secretary of Party I/Union for the last 12 years and he has been taking part in the discussion on behalf of the union with the Party II/Employer. By a letter dated 25th August, 1990, the union served a notice including 17 demands and if the demands were not met with the employees who were members of the union were to go on a strike.

After the above notice was served there were discussions between the union and the employer and there was a settle-

ment dated 11-9-1990 (vide copy of settlement produced). In the settlement all demands were settled excepting the four demands namely serial nos. 1, 2, 9 and 10 of the impugned letter-cum-strike notice. As these four points remained to be settled before the learned Labour Commissioner it was mooted that the four points of dispute be referred to an Arbitrator as contemplated u/s 10(A) of the Act. After this agreement the Government was approached for the necessary orders and the parties had agreed upon my name as an Arbitrator and on common consent my name was proposed to the Government and in turn I was consulted whether I was ready to accept the assignment and after I consented the notification dated September 17th, 1990 was issued and as per the annexure I am supposed to consider whether the following demands of the workmen are reasonable and justified:

1. DEMAND No. 1—Overtime Payments:—That Overtime ought to be paid at double the rate of wages for every hour worked beyond 8-hours per shift/day; and that arrears ought to be paid to the Flotilla-staff w.e.f. 1st June 1988. Cfr. Union's letter dated 1st May, 1990

2. DEMAND No. 2—Enhancement of Mess Allowance.—That the Mess allowance ought to be enhanced on the following basis:

Sailors—Rs. 12/- per shift/day.

Coxswains/Machinists—Rs. 16/- per shift/day.

3. DEMAND No. 9—Mess Allowance to T. C's/Inspectors:—Mess Allowance ought to be paid to all the Ticket Collectors/Inspectors alongwith the arrears with effect from 1st January, 1985; without any discrimination.

4. DEMAND No. 10—Superannuation:—That the retirement age of the Ticket-Collectors and Ticket Inspectors ought to be fixed at 60 years.

If not, to what relief the workmen are entitled to?"

After the above Government Notification together with the annexure was published in the Gazette. Notices were issued to the parties. The Party I/Union filed its written statement through its General Secretary, Shri Gregorio Moura on 5th October, 1990 reiterating that all the four demands made by the union are just and proper and they should be granted in toto. While contraverting the above statement the Party II/Employer filed its written statement dated 23-10-1990 through the Capt. of Ports, Capt. A. P. Mascarenhas contending inter alia that the River Navigation Dept., hereinafter referred to as 'RND' is running the ferry services in Goa at a colossal loss and the four demands if granted would considerably enhance the financial burden on the RND. It is also stated that due to the recent collapse of a span of the Mandovi bridge, the completion of the bridge scheduled in February-March, 1991 is postponed indefinitely and in order to cater to the needs of the public the Department would have to requisition at least four more vessels at great cost. So, the Department has strongly opposed the demands and has claimed that the same be rejected in toto. After considering the points raised in the

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written statement, the union filed their rejoinder on 27-10-1990 and I discussed the issues proposed by both the parties. After discussion, some proposed issues were dropped and I framed the following 6 issues on the very day.

1. Considering their nature of duties whether the Ticket Collectors/Inspectors can be considered as Flottilla Staff?
2. Whether the workmen are entitled to the Over time payments at double the rate of wages for every hour worked beyond 8 hours and if so whether with effect from 1-6-1988?
3. Whether the rate prescribed of Rs. 3.45 per hour is just and reasonable?
4. Whether the demand of Party No. I, for enhancement of the Messing Allowance is justified?
5. Whether the Ticket Collectors/Inspectors are entitled for Messing Allowance and if so with effect from 1-1-1985?
6. Whether the retirement age of Ticket-Collectors/Inspectors should be 60 years?

MY FINDINGS:

1. The Ticket Collectors/Inspectors are flottilla staff.
2. The workmen entitled to over time payment at 1½ times the ordinary rate of wages for every hour work beyond 8 hours from 19-9-1990.
3. The prescribed rate of Rs. 3.45 per hour is neither just nor reasonable.
4. Demand for enhancement of the messing allowance is not justified.
5. No.
6. The retirement age of Ticket Collectors/Inspectors should be 60 years w.e.f. 19-9-1990.

REASONS: —

Before considering the above issues individually, I shall briefly go through the main activities of the RND headed by the Captain of Ports. The RND is to supply conveyance in the various rivers and tributaries all over Goa, where they are not connected by bridges. About Panaji the main bridge collapsed on 6th July, 1986. Before collapse there was only one ferry plying between Panaji and Betim and after collapse the department had to introduce many ferry boats and launches for transporting members of public, vehicles and goods at some points. At Panaji itself on an average 1.30 lakhs cross the river every day and besides many vehicles cross the river.

The Head Office of RND is situated in its own building and has three sections namely Administrative Section, Traffic Section and Accounts Section. Besides the head office the RND has also a Marine Workshop at Betim and has about 170 employees who are covered by the Factory Act. In Accounts Section there are four in Administrative Section and 12 in Accounts Section. The age of retirement of the workshop employees is 60 and while doing over time work they get double the pay as provided for by the Factory Act. The administrative employees have the retirement age of 58 and they enjoy all Government holidays and they work for 8 hours a day in a week of 5 days.

The third Section with which we are mainly concerned is Traffic Section and the employees working on the ferry boats and launches are known as 'Flottilla Staff' and this staff consists of Coxswain, Machinist and three sailors that is 5 crew men for each ferry or launch there being two sailors on some ferries at remote points. All these employees have the retirement age at 60 and they are provided with mess allowance and they get over time pay at the rate of Rs. 3.45 paise per hour. Their demand is restricted to the increase in messing allowance and over time pay. They do not work at the rate of 8 hours a day but they work in shifts, each shift consisting of 24 hours viz. 12 hours in a day and 12 hours in the next day and they have an off for next 24 hours and thus by rotation they work for 72 hours in a week divided into 48 hours of regular working and 24 hours overtime for which they get over time pay. They get only industrial holidays and not the regular government holidays and no benefits of leave. They are taken as industrial workers and they are allowed to form an union though they are Government employees.

The next Section with which we are concerned are the Ticket Collectors and Inspectors. There are 6 Inspectors and 71 Ticket Collectors and one Traffic Inspector. Out of the 71 Ticket Collectors, 27 work at Panaji and others at the different river points. All the T.C's/Inspectors and Flottilla staff are the members of the Party I/Union. Similar to the flottilla staff the T.C's etc., work in two shifts of 24 hours each and in all 72 hours a week. They get overtime pay similar to the flottilla staff but mess allowance is paid to the T.C's of non-Panaji points while no messing allowance is paid to the T.C's at Panaji. Some 18-20 T.C's work for 8 hours shift and they do not do Overtime work. The system of 24 hours shift is prevailing since the time of Portuguese and the same was continued after Goa liberation on 19th December, 1961. The territory of Goa attained Statehood on 30th May, 1987 and the system of 24 hour shift continued as before. After the Absorbed Employees Act of 1986 the employees were given designation and equated post and they started being governed by Civil Service Rules, except those who opted for Portuguese pension. So these Govt. employees got the benefit of the 2nd, 3rd & 4th pay commission recommendation. About over time the 2nd pay commission has fixed the scales which were subsequently accepted by the 3rd pay commission. The 4th pay commission recommends that no over time be paid. The over time rates are fixed by Central Govt. as per Exb. D. and all eligible employees are paid the over time @ Rs. 3.45 paise per hour, irrespective of the fact whether the claimant is a Ministerial staff or non-ministerial staff. By a Govt. Notification the T.Cs and Inspectors are included in the category of flottilla staff but according to RND the flottilla staff is that staff which is required for running the ferry and the T.Cs whose work is just to issue tickets by standing outside cannot be taken as flottilla staff and they are just ministerial staff similar to L.D.Cs. According to RND their inclusion in the flottilla staff by the Notification does not make them flottilla staff and all along their work is non-technical and ministerial in nature. So, the RND claims that Rule 56 (A) of the Fundamental Rules is applicable to them and according to them the retirement age is fixed at 58 while the retirement age of Coxswain, Machinists, Sailors etc., is 60 because Rule 56 (A) applies to them. The RND further maintains that the T.Cs and Inspectors are not necessary for running the vessel and the vessel is run by the crew consisting of Coxswain, Machinists and Sailors. So this is the main point of dispute as regards the service condition of the T.Cs. who are till now being retired after attaining the age of 58 and this is a bone of contention between the union and the employer.

I have analysed the points at dispute after going through the records and I find that even though the issues are 6 in number the main points of dispute are regarding the retirement age of T.Cs/Inspectors, as covered by issue no. 6 and the claim for over time payment at the double rate of wages for every additional hour covered by issue no. 2. Besides the main point the other points are the claim for enhancement of the messing allowance and the claim by Panaji, T.Cs for messing allowance which is not being paid to them so far. The oral evidence is led on these points by both the parties. The evidence of union Secretary, Gregorio Moura is recorded into two shifts on 31-10-90 and 1-11-1990. The General Secretary, Shri Fonseca and the T. C. Shri Constantino Teixeira. This is the evidence led by the union. As against this, the Administrative cum Accounts Officer by name Warriar is examined in two shifts on 2-11-90 and 4-11-90. They have explained some points in detail and I shall go through this record and the oral evidence to know the points at issue. I shall discuss the points with reference to the record and the oral evidence and I shall see whether the demands made by the union are just and proper and whether the department is justified in rejecting the demands.

While analysing the position, I shall study the evidence on record as well as the documents produced before me such as Notifications etc. Along with them I shall study the submissions made before me by the learned Sr. Counsel Shri H. R. Bharne for RND and the Labour Consultant Shri Subhas Naik for the union. Both of them have made very studied arguments explaining every piece of evidence on record and so also they have relied on some legal authorities. However, it is not possible for this Arbitrator to extensively deal with all aspects because the award has to be brief touching the points placed before him. It is now well settled that the award of an industrial arbitrator is amenable to judicial review. So, what the High Court and Supreme Court have observed is that the award should not be a routine formality dwelling upon the points in a cursory manner. So, what is expected of an Arbitrator is that he

should study all points clearly and deal with the legal aspect as and when necessary and the award should not be an empty formality. All the same, the award is not supposed to be a judgment by a regular court and tribunal and it is just sufficient if the Arbitrator gives proper reasons for the findings recorded by him. The provisions of Arbitration Act, 1940 do not apply to the proceedings before an Industrial Arbitrator. The Arbitrator has been invested with authority to settle the dispute between the parties on the joint agreement between them and so he is well expected to do substantial justice between the parties by giving his award because the award of an Arbitrator u/s 10(a) is of quasi judicial character. As such, the award is supposed to be based on facts and evidence on record and the judicial principles can be considered only incidentally to see that the ultimate findings do not go against the known judicial view.

For example Shri Subhas Naik in his rejoinder relies on a Supreme Court Authority reported in 1973 S.C.C., page 440 wherein the Supreme Court have laid down that the over time cannot be less than normal pay wages. In that case, the Supreme Court further held that all non-factory workers be paid O.T. at 1½ times the normal pay and also allowed the arrears. Shri Bharne for RND also relies on Supreme Court Cases to point out that while considering the different aspects of O.T. the financial position of the employer has also got to be taken into consideration. So, the capacity of the employer to pay cannot be ignored while evolving a formula of O.T. Pay. He has based this argument on the authority of Supreme Court.

Along with the above legal principles, based on Supreme Court rulings, I have also to consider the other points based on constitutional provision as profounded by Shri Bharne. He maintains that the Notification as regards O.T. is issued by the Central Government under Article 309 and only High Court or Supreme Court have power to scratch the notification. So the subordinate Courts and the Arbitrator cannot do it because they cannot sit upon the judgement. He also refers to Article 73 regarding the power of Central Government and Article 162 regarding the power of State Government. Formerly, Goa was an union territory and now it is a regular State. So both the provisions are attracted. According to him, the rules are made under Article 309 and they are law and the Notification stands good and it cannot be set aside.

I am fully aware of the position under law and the limits of jurisdiction, power and authority of an Industrial Arbitrator. I am not going to sit upon the judgment of the Notification issued by the Central Government prescribing the rate of O.T. But on factual aspect I shall have to see whether the Notification is made applicable to the flotilla staff properly and whether the rates of O.T. are just and proper under the changed circumstances. So also while considering the rates of O.T. being paid to the flotilla staff, I shall also have to consider the Supreme Court observations as regards O.T. not being less than the normal pay wage and secondly the principle as regards the financial capacity of the employer while directing the enhanced rate of O.T. So keeping the principle before me I shall now take a resume of the submissions made before me.

Out of the six issues, for consideration before me, the issues No. 2 and 3 relating to the demand of workmen for O.T. payments at the double rate of wages and whether the present prescribed rate of Rs. 3.45 paise per hour is just and reasonable were argued first before me. So, I shall record my finding on these two issues first. Shri Subhas Naik, for the union took me through the history of River Navigation in Goa. This is a peculiarity of Portuguese regime who introduced the River Navigation in all rivers and rivulets in Goa. After liberation on 19th December, 1961 the same River Navigation system was continued and the staff were absorbed in regular Government service by the Act of 1966. The recommendations of the 2nd, 3rd and 4th pay commissions were also made applicable to the flotilla staff and there was considerable rise in their salary. The 2nd pay commission prescribed the rate of O.T. and they were made applicable to the flotilla staff after 1957. In 1973, the 3rd pay commission scales were implemented. On 19th February, 1974, the Government issued Notification as regards O.T. and O.T. rates were revised in slabs, the last slab being Rs. 3.45 paise. Initially, the rates were applicable to the office staff and comparable staff. Subsequently this was made applicable to the flotilla staff.

In 1986, 4th pay commission scales were implemented and there was substantial rise in the basic pay and other allow-

ances. While giving such rise the 4th pay commission also recommended that the system of O.T. should be stopped. Consequently, it did not recommend any revised rates of O.T. So, between 1974 to 1986 the rates of O.T. remained stagnant and the O.T. rate of Rs. 3.45 is stated to be less than normal 1½ rate, by the union.

According to the union, a worker gets a normal wage for first 8 hours and for the subsequent four hours of O.T. he gets less than 1½ of normal wages. According to the union the O.T. is a sort of compensation and it cannot be less than 1½. After several meetings and correspondence the issue was raised in 1987 and main proposals were put forth by the union such as the demand of revised rates at Rs. 8/- per hour to Rs. 23/- per hour by letter dated 1st May, 1990. Alternatively, the union was prepared to accept the wages for O.T. work at 1½ times the ordinary rate of wages. In June, 1988 the RND agreed to work out a separate scheme for flotilla staff but nothing was done. Thereafter in a meeting dated 14-10-1988 it was agreed to meet again on 14th November, 1988 as per the minutes. But such meeting never took place. Hence strike notice dated 25th August, 1990 was given demanding the double rates and thereafter the agreement for arbitration.

While contraverting the above claim, Shri Bharne for RND states that by virtue of the 3 pay commissions the flotilla staff which was absorbed in the regular cadre got substantial benefit of rise in pay, D.A. and other allowances. So, according to him, there is a direct link between the pay packet and O.T. The pay commission took all things into consideration and gave a rise in wages and allowances. According to him, in 1967 the system of 8 hrs. shift was changed into 12 hour shift either at the instance of Shri Buktani or the Union but the rates of O.T. were prescribed and there was an agreement for payment of O.T. at the rate of Central Government Notification vide Notification Exb. D issued in 1987. Rule 11 prescribes the rate of Rs. 3.45 paise under Central Govt. Regulation. So, besides the flotilla staff of RND, the staff of Forest Department and Electricity Department are being paid O.T. at the same rate. Thus sufficient material of comparable instances is brought on record.

Shri Bharne questions whether a person can continuously work for 24 hours? According to him at night time the staff has comparatively no work or negligible work. At Panaji, only two ferries work at night time and at other points there is no night service and the staff is just in waiting to meet emergency so that the ferry would be available. Secondly, the staff is supposed to watch the ferry. So according to him, the O.T. paid for night time duties is either a weightage or night time allowance. There is no doubt some force in what he states in this regard.

Adverting to the recommendations of the 4th pay commission (page 91—O.T. System) he states that the O.T. had to be stopped completely. In that case the working would have to be brought to 8 hours. But the 12 hours working system was already prevailing from 1967 to 1987. If the system of 8 hour shift was to be introduced by discontinuing the 12 hour shift; additional staff have to be recruited incurring heavy expenditure. This position was made very clear in the meeting of 14th Oct., 1988. As per the minutes it was clearly stated that O.T. could not be increased but mess allowance was increased by Rs. 2/- since Oct., 1988. So according to him the total benefit derived by the flotilla staff was messing allowance plus O.T. This is a single concept divided into two. These two cannot be taken in isolation. According to him the payment of Rs. 3.45 plus messing allowance should be taken as a whole and the notification Exb. D issued in 1987 is operative in January, 1990.

In that case, the question is what will happen to the demand for increase in O.T. The employer took a rigid stand that O.T. should not be revised. The O.T. rate at Rs. 3.45 as per Notification Exb. F produced with W. Statement of Party I, is similar to the rates prescribed by the 3rd pay commission. The only benefit which the workmen got was that the system of deducting one hour from O.T. of 4 hrs. was discontinued and workers started getting the O.T. for all the 4 hours. According to the union the 3rd pay commission (vide page 96) has divided the Govt. servants into two categories namely, industrial employees and non-industrial employees and each Govt. servant falls in one of the two categories, there being no third category. For Industrial Employee all Labour Laws are applicable. There is a difference between the working of the two categories of em-

ployees. Non-Industrial employees of Government work for 8 hours a day, for 5 days in a week and get all holidays and leave etc. If they work on 6 day, then the working is less than 48 hours, besides they get 2nd Saturday, all sort of leave. For Industrial employees only service rules are applicable. The flotilla staff are industrial workers who work for 8 hours in a day, for 6 days in a week and they get only industrial holidays and no Government holidays. The Union Secretary, Shri Fonseca say that all factories pay double over time, barges pay double over time, motor transport workers get 1½ time the normal pay. The Union says that these are comparable instances. Further, relying upon the Supreme Court case, the union says that non-factory workers were directed to be paid over time at 1½ times of the normal pay. The Motor Transport Workers Act, 1961 produced on record says about over time at Chapter 6, page 18. About over time u/s 30 the Act says that if a worker works more than 8 hours in one day or more than 48 hours in a week the worker shall be entitled to the wages in respect of over time work at 1½ times of ordinary rate of wages. So, by and large it seems that the union would be satisfied if the O.T. is fixed at 1½ times the ordinary rate of wages. Even this is not acceptable to the RND because according to it the workers got a substantial rise as per the 4th pay commission which took into consideration all aspects. However, the messing allowance was increased by Rs. 2.00 in 1988. This is no doubt true. However, the question is whether the rates of O.T. should be stagnant for all these years. The RND seems to be prepared for a change in the working hours and is prepared to give some break if needed. They have also offered to adjust the timing of the ferries accordingly. All these points and factors will be relevant for consideration while considering the enhancement of messing allowance. Presently, I am on the point of the O.T. rates. According to RND it is not possible to introduce 8 hours shift system due to financial constraint. Admittedly, the flotilla staff is working for 12 hours in a shift consisting of 8 hours + over time. The rates of O.T. fixed by Notification dated 7-10-1988 are applicable only to flotilla staff and there does not seem to be any rationale behind issuing the rate at Rs. 3.45 which is less than half the normal wages. It is no doubt true that if the O.T. rates are increased the financial burden on RND will increase. This cannot be helped in the given circumstances. The workshop workers get double the over time pay. It may be that this is done under the Factory Act. However, while considering the position under the I.D.A., I have also to see whether just and proper O.T. is being paid or not. In the Supreme Court case 1½ times O.T. was allowed to Factory workers. The Motor Transport workers are also allowed the over time rate at 1½ time the ordinary rate of wages. The union which has produced the copy of the Act seems to be willing to accept the O.T. at this rate. If the RND wants to avoid paying the O.T. at enhanced rates to its staff it can adhere to the system of 8 hours shift, acting as per the recommendations of 4th pay commission which does not prescribe over time pay. If some Government staff is asked to work over time they are compensated by allowing them compensatory off. However, for RND this does not seem to be feasible and they are constrained to adhere to the system of 12 hours shift, which is prevailing since 1967. The workers do work over time and some compensation is needed to be given to them. So, upon an over all consideration of the facts and circumstances I feel that the award of the over time at the rate of 1½ times the rate of wages seems to be proper and I should allow the same. So, while answering first part of the issue no. 2, I hold that the workmen are entitled to over time payment but not at double the rate of wages as claimed by them but I hold that they are entitled to the over time payment at 1 and half time the ordinary rate of wages for every hour worked beyond 8 hours. There is then the question of giving retrospective effect to this. The RND claims that it is not in a position to bear additional financial burden and even an increase of one rupee would incur an expenditure of Rs. 11 lakhs. I feel that I have no power nor jurisdiction to grant the benefit with retrospective effect as my working starts under the Notification dated 17th September, 1990. So, I direct that the workmen be paid the Overtime wages at the above rate with effect from 17-9-1990 and I answer issue no. 2 accordingly. About issue no. 3 naturally, the rate of Rs. 3.45 per hour as prescribed in the Notification is not just and reasonable and I answer issue no. 3 accordingly.

Issues 1 and 6:—These two issues relate to the nature of work carried out by Ticket Collectors and Inspectors

and whether they are the flotilla staff. Whether they should be considered as members of flotilla staff. The question on the issue no. 6 is whether the age of this staff for retirement should be 60 years or not. These two issues are interlinked and connected with each other and so I take them for discussion together.

By a Government Notification, the Government has included the T.Cs and Inspectors in the category of flotilla staff. It is no doubt true that for running a vessel the required flotilla staff is Coxswain, Machinists and Sailors and T. Cs are not required for running the vessel. However, their services is an integral part of the ferry system and the ferries run only after the tickets are issued. For Panaji points the tickets are issued for vehicles only while for all other points tickets are issued for both the passengers as well as the vehicles. At Panaji point the T.Cs remain outside the vessel and they sit in their respective Booths for issuing the tickets. At all other points the T.Cs have to board the vessels for issuing the tickets and checks the ticketless travellers. All the same they are not the technical staff and in a way they are not the essential part of the flotilla which is required for running a vessel. It would be worthwhile to see what Shri Warriar, the Administrative Officer of RND has to say in this regard. Out of 71 ticket collectors 27 T. Cs work at Panaji and other outside Panaji. For running the ferry the employees have the duty on shift basis and it starts from 12 noon on one day and ends on 12 noon on next day. Thereafter the employee is off duty for the next 24 hours. In this fashion the Coxswain, Machinists and Sailors work on a shift of 24 hours and in 3 shifts for 72 hours in a week. About T. Cs many of them work in such shifts but about 18 to 20 T. Cs work in 8 hours shift. The working of 3 shifts in a week is going on for many years and the employees are considered as industrial workers. As per the copy of Government Gazette there are Ministerial and Non-Ministerial staff. The L.D.C. is a ministerial staff but the Godown Keeper is a non-ministerial staff. The ministerial staff are those who mainly do the work by sitting at the table. About T. Cs they issue tickets by sitting in the booth while elsewhere they remain on the ferry for issuing the tickets. According to him, the T. Cs are not an integral part of the ferry as far as its plying is concerned and their presence is essential for just collecting the revenue. He is prepared to construct booths at non-Panaji points also. After describing the duties of Coxswain, Machinists and Sailors he says that T. Cs are not required for running the ferries. In cross examination he states that the flotilla staff is governed by I. D. Act and for Coxswain, Machinists and Sailors the retirement age is 60 because they are governed by Rule 56(B). About T. Cs etc., he states that they are governed by Rule 56(A) and so their retirement age is 58 years. The retirement age of the office staff members is 58 but for class IV, the retirement age is 60. He has specifically questioned about the service conditions of the T. Cs. He admits that the orders or appointment letters issued to the RND employees nowhere mention that their retirement age is 58. There is no Govt. Notification nor any individual order stating that the age of retirement for Coxswain, Machinists and Sailors is 60 and that of T.Cs and Inspectors, it is 58 years. As per Fundamental Rule, the retirement age of Government servant is either 58 or 60 depending upon the category to which the Govt. employee belongs. He admits that he interprets the rule and rule no. 56 in particular and issue the letters of retirement. He issues the orders of retirement to T.Cs etc., at the age of completion of 58. He admits that he interprets the Fundamental Rule No. 56 and issues the orders. He admits that the T.Cs Inspectors etc., are included in the flotilla staff by a Govt. Notification. So even though this is so, he places the T.Cs in category 56(B) as according to him their job is a ministerial job. The question then is whether this interpretation made by him should hold good in law in the absence of a specific Govt. order, direction or notification to that effect. This has become necessary because he gives an admission that the flotilla staff and the workshop staff work for 6 days a week and 8 hours a day and they are entitled to Industrial holidays only and not regular Govt. holidays. Their retirement age is 60. As against this, the office staff work for 5 days in a week and works for 8 hours 15 minutes a day and they get all Govt. holidays. The retirement of this staff which is ministerial staff is 58. This is how there are clearly two categories namely one category of flotilla staff and workshop staff having the retirement age of 60 while the office staff which is ministerial staff has the retirement age of 58. Between these two categories

where does the staff of T.Cs and Inspectors stand? Admittedly, the T.Cs and Inspectors are included in the non-ministerial category and their working hours are similar to the flotilla staff. By Govt. Notification they are included as members of the flotilla staff. The T.Cs get only industrial holidays and they are prevented from enjoying regular Govt. holidays and they cannot avail of the different modes of leave which are available to the ministerial staff. So the question is whether T.Cs etc., should be placed in the ministerial category while infact they are included in the non-ministerial category. So the placement of the Coxswain etc., in the category of 56(A) and T.Cs etc., in category 56(B) is a matter which is entirely in the discretion of the Administrative-cum-Accounts Officer who issues the order of retirement. There is no Govt. Notification or appointment letter prescribing that the retirement age of T.Cs etc., is 58. Admittedly, the T.Cs do the similar duties like Coxswain etc., for 8 hours in a day and 6 days in a week and work for 72 hours in a week entitling them to claim over time for 24 hours besides the regular duty of 48 hours. So, the position is rather anomalous in that the Coxswain etc., retire at the age of 60 while T.Cs etc., retire at the age of 58.

While contraverting the above position and while deriving on the admissions of Shri Warriar reproduced above Shri Subhas Naik for the Union maintains that the RND and its witness the 'Administrative cum' Accounts Officer, Shri Warriar have erred in fixing the retirement age at 58 years. According to him, the RND should come forward with a decision whether T.Cs and Inspectors are industrial workers or non-industrial workers (till now they are treated as industrial workers as seen above). According to him the RND cannot say that they belong to neither category. According to him the T.Cs are given industrial holidays and they work as industrial workers. According to him the provisions of I.D. Act are applicable to them. According to him, model standing orders applicable to industrial workers in Govt. service provide for retirement age of an industrial worker at 60 years. According to him, if the RND feels that the T.Cs etc., are a part of the office staff they should be extended the facilities available to non-industrial employees such as 5 days week, Govt. holidays, leave facilities etc. In the absence of such facilities being extended to them he claims that the model standing orders are stipulating the retirement age for industrial workers at 60 years. He has openly come out with a proposition that if the RND opts to re-categorise them into non-industrial workmen they should be allowed to avail of all benefits accruing to a Govt. employee doing office work. There seems to be some substance in what he states because the T.Cs are being treated as office staff for the purpose of retirement at the age of 58 while the work being done by them is of the nature of an industrial worker whose retirement age is 60. It would be worthwhile to see what the Counsel for the RND has to say in this regard.

Shri Bharne while cursorily dealing with this point, states that T.Cs are administrative staff going by rotation. According to him, Fundamental Rule 56 be read carefully, and according to him, T.Cs are not the flotilla staff because they are not necessary for running the vessel. Along with this argument he seems to be relying on the decision of Presiding Officer of the Industrial Tribunal in Ref. No. IT/37/82 dated 3-1-1989. Incidentally, I was the Presiding Officer then and I have to see whether this Judgment is a judgment in REM or whether this is a judgement in an individual case. The facts show that the judgment is a judgment in an individual case. One T.C. by name Purshuram Dessai was retired on 1-2-82 on attaining the age of 58 years. The Tribunal was called upon to decide whether this action of the employer was just and proper. The T.C. examined himself and four more witnesses. The question also was considered whether Fundamental Rule 56(A) or 56(B) was attracted. F.R. 56(A) reads thus 'Except as otherwise provided in this rule every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of 58 years. Sub-clause B of FR 56 deals with workers who are to retire after attaining the age of 60 years and such worker is defined as highly skilled, skilled or semi-skilled workmen. Considering the above definition the Tribunal then held that the T. C. P. Dessai was not a workman within the meaning of the term but he was a class III employee. The Tribunal further observed that P. Dessai admitted that the work assigned to him was clerical in nature. So, the action of the employer in retiring him at the age of 58 was held to be just and proper. As stated above, this was a judgment in an individual case and was not a judgment in REM and while analysing the position I have to consider the position of 71 T.Cs who are treated as industrial workers all

along who are treated as the members of the flotilla staff and the duty carried out by them is the duty of an industrial worker because of the nature of work and hours of duty done by them. It is no doubt true that the T.Cs are not necessary for running a ferry but they are an integral part of the system of flotilla consisting of the Coxswain, Machinists and Sailors. The first three no doubt run the vessel but the T.Cs are present along with the vessel because they regulate the flow of passengers and vehicles into the ferry. The ferry is a public utility service and the Govt. levy nominal charges for the travelling public. All the same to elik out some revenue the Government charges the vehicles at Panaji points and passengers and vehicles at non Panaji points. For a proper and systematic running of a ferry the presence of T.Cs and Inspectors is highly essential and in their ferry service which is already running in losses can run into more losses. So, the T.Cs and Inspectors can be taken to be an essential part of the ferry system consisting of 5 crew members who are running the ferry while the T.Cs are looking after the maintenance of traffic into the ferry. I feel that all these points were not properly brought to the notice of the Presiding Officer of the Industrial Tribunal who recorded a finding against an individual T.C. who had retired from service on 1-2-82 on attaining the age of 58 years and the Government reference came to be decided about 7 years thereafter and by then much water had flown below the bridge. The T.C. who had retired 7 years back and had attained the age of 60 five years back could not have been reinstated into the service. So the only question was of awarding the relief by way of compensation for two years for which he had not rendered any service even when he was prepared to do so. So, that ex-T.C who was party I in IT/37/82 was a victim of circumstances and his case was not properly presented before the Presiding Officer. So, that judgment cannot be taken as a guideline for considering the present dispute and that judgment was not a judgment in REM but it was a judgment in an individual case. After referring to the correspondence pertaining to the T.Cs I find that the union had taken up the cause of T.Cs and the Inspectors to the Secretary, Industries and Labour and I find that the Secretary Shri Fonseca had signed the recommendations on 24th April, 1988 and I find a report of the learned Labour Commissioner dated 31-5-88. The lrd. Labour Commissioner in his report mentions that the Coxswain etc., enjoy the benefit of retirement at the age of 60 years while T.Cs etc., retire at the age of 58 years. He found substance in the statement of the union that the T.Cs have been classified in Group 'C' (Non-ministerial, non-Gazetted) along with the post held in the RND such as Forger, Welder Fitter, Gr. I, Plater, Electrician, Carpenter, Mechanic Gr. II, Sailor, Chief Carpenter, Mechanic Gr. I, Sr. Electrician, Coxswains, Machinists and others all of whom enjoy the benefit of retiral age being fixed at 60 years of age. He also reports that in appraisal of several conditions, duties, functions, status of T.Cs and Ticket Inspectors places them on the same footing as other employees in the department. He further observes that under the circumstances there is no logical justification for depriving this category of workmen from the benefit of retiral age enjoyed by their counter parts. He further observes that T. Cs and Ticket Inspectors fall within the scope of the term 'workman' as defined under the I.D. Act. He further observes that model standing orders for casual workers in Govt. Departments also prescribes 60 years as retiral age. He has therefore recommended that under the circumstances the T.Cs and ticket inspectors has a prima-facie face which needed due consideration. I think the matter was not further pursued in view of the pendency of IT/37/88 before the Industrial Tribunal and after the decision dated 3-1-89 nothing further happened in the matter. I feel that the above judgment of the Industrial Tribunal cannot operate as a bar for considering the issue afresh and after considering all incidental aspects the T.Cs having been declared as workmen and even casual workers being eligible for retiral age of 60, I find some force in the recommendations made by the Labour Commissioner. I find that the RND has nothing more to urge in the matter excepting, placing reliance on the judgment which I have discussed rather in detail in the foregoing paragraphs. So, so far as issues 1 and 6 are concerned, I hold that considering the nature of duties the Ticket Collectors and Ticket Inspectors can be considered as flotilla staff and the retirement age of Ticket Collectors and Ticket Inspectors should be 60 years.

Issue no. 4:—This issue relates to the demand of the union for enhancement of messing allowance. I do not find any justification in this demand. It is no doubt true that the prices of commodities are high rising. This aspect is considered by the 4th pay commission by giving a rise in the

wages and Dearness Allowance and other allowances. Further, the messing allowance is not a part of the service condition and the RND has granted the messing allowance more or less as a gesture to please the staff members who continuously work for 12 hours. In this regard, Shri Bharne states that the workers bring food with them and after 12 hours many people go home and they bring lunch boxes with them. So, there is no connection to whatsoever between the service and the messing allowance. As stated above, the RND gave a rise of Rs. 2/- in 1988 while considering the request of enhancement in Overtime pay. I do not feel that the rate of messing allowance does call for any interference and I hold that this demand is not justified.

Issue no. 5:—This issue relates to the demand of Ticket Collectors and Inspectors at Panaji for messing allowance. I do not find any justification in their demand because some 17 to 18 workers are on a duty of 8 hours and they do not get even over time pay. About the service conditions of the T.Cs the RND has offered to give them some break if needed. They have also offered to adjust the timing of ferries to suit their requirement of lunch or dinner. The T.Cs and Inspectors are not required to be present on the vessel continuously and they can adjust their requirement of messing and so I do not find that they should be awarded messing allowance from 1-1-85 as claimed by them. I, therefore, answer issue no. 15 in the negative.

This is how I have considered the points of reference made out to me in the Govt. notification. As per annexure 'C', I was to record my findings on demands 1 to 4 and in view of the finding on issues 1 to 6 as above, I record my finding as per order below:

ORDER

Demand No. 1—*Overtime Payments*: I hold that the workmen are working beyond 8 hours shift/day and overtime ought to be paid to them at 1½ times the ordinary rates of wages, and the arrears be paid to the flotilla staff from 15th September, 1990.

Demand No. 2—*Enhancement of Mess Allowance*: I do not find any justification in demand for enhancement of mess allowance and it is not necessary to enhance the mess allowance.

Demand No. 9—*Mess Allowance to T.Cs/Inspectors*: I hold that mess allowance need not be paid to the Ticket Collectors/Inspectors along with the arrears with effect from 1st Jan., 1985, as claimed by them. This finding has nothing to do with the present system of payment of messing allowance to some of the T.Cs/Inspectors.

Demand No. 10—*Superannuation*: I hold that the retirement age of the Ticket Collectors and Ticket Inspectors should be fixed at 60 years.

The above are the findings as regards the four demands. I recommend that the workers namely the flotilla staff be granted relief as per the findings recorded above. Besides this, they are not entitled to any other relief.

S. V. Nevagi,
Arbitrator.